

City of Canandaigua Police Department General Order

General Order: 400	Subject: Use of Force
Authority: Chief Mathew A. Nielsen	Effective Date: July 7, 2017
Rescinds: All Previously Issued Directives	Revised 2/4/10, 7/7/17, 9/27/19, 8/10/20, 10/01/20

I. PURPOSE:

Members of the Canandaigua Police Department are authorized to use reasonable and legitimate force in specific circumstances. Federal, Constitutional and State statutory standards dictate when and how much force can be used. Police Officers are often forced to make split section decisions in situations that are tense, uncertain and rapidly evolving. The purpose of this policy is not to dictate every action of a member in these situations but rather to provide guidance for members of the Canandaigua Police Department regarding their use of objectively reasonable force in the performance of their official duties.

II. POLICY

Police officers are frequently confronted with situations where control must be exercised and force must be used in order to affect an arrest, protect themselves or protect others. The Federal and State standards by which use of force is measured are both founded in the basic premise of objective reasonableness. Officers of the Canandaigua Police Department are authorized to use only the amount of force that is objectively reasonable under the circumstances for the officer to effect an arrest, prevent an escape, or in defense of themselves or others.

It is the responsibility of all officers of this agency to be thoroughly familiar with departmental policies involving use of force, Article 35 of the New York State Penal Law and the standard of objectively reasonableness, as established by the US Supreme Court in *Graham v. Connor*, 490 U.S. 386 (1989).

III. DEFINITIONS

- A. Objectively Reasonable** – An objective standard, established in *Graham v. Connor*, used to judge an officer's actions. Under this standard, a particular application of force must be judged through the perspective of a reasonable officer facing the same set of circumstances, without the benefit of 20/20 hindsight, and be based on the totality of the facts that are known to that officer at the time that the force was used.
- B. Use of force** - Any use of force other than that which is considered deadly physical force.

- C. Deadly physical force** - Physical force which, under the circumstances in which it is used, is readily capable of causing death or serious physical injury.
- D. Dangerous instrument** - Any instrument, article or substance, including a “vehicle” as that term is defined below, which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or serious physical injury.
- E. Deadly weapon** - Any loaded weapon from which a shot, readily capable of producing death or other serious physical injury, may be discharged, or a switchblade knife, gravity knife, pilum ballistic knife, metal knuckle knife, dagger, billy, blackjack, plastic knuckles or metal knuckles.
- F. Firearm** - (a) any pistol or revolver; or (b) a shotgun having one or more barrels less than eighteen inches in length; or (c) a rifle having one or more barrels less than sixteen inches in length; or (d) any weapon made from a shotgun or a rifle (whether by alteration, modification, or otherwise) if such weapon, as altered, modified, or otherwise, if such weapon has an overall length of less than twenty-six inches; or (e) an assault weapon.
- G. Detention facility** - Any place used for the confinement, pursuant to an order of a court, of a person charged with or convicted of an offense, or charged with being or adjudicated a youthful offender, person in need of supervision or juvenile delinquent or held for extradition or as a material witness or otherwise confined pursuant to an order of a court.
- H. Probable Cause** - Based upon an apparent state of facts, sufficient in themselves to warrant a person of reasonable caution to believe that an offense has been or is being committed.
- I. Physical Injury** – Impairment of physical condition or substantial pain.
- J. Serious physical injury** - Physical injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.
- K. Vehicle** - A motor vehicle, trailer or semi-trailer as defined in the vehicle and traffic law, any snowmobile as defined in the parks and recreation law, any aircraft, or any vessel equipped for propulsion by mechanical means or by sail.

IV. PROCEDURES

A. Determining the Objective Reasonableness of Force

1. When used, force should be only that which is objectively reasonable given the circumstances perceived by the officer at the time of the event.
2. Factors that may be used in determining the reasonableness of force include, but are not limited to:
 - a) The severity of the crime or circumstance.
 - b) The level and immediacy of threat or resistance posed by the suspect.
 - c) The potential for injury to citizens, officers, and suspects.
 - d) The risk or attempt of the suspect to escape.

- e) The knowledge, training, and experience of the officer.
- f) Officer / Subject considerations such as age, size, relative strength, skill level, injury or exhaustion, and the number of officers or subjects.
- g) Other environmental conditions or exigent circumstances.

B. Physical Force

1. In general terms, force is authorized to be used when reasonably believed to be necessary to effect a lawful arrest or detention, prevent the escape of a person from custody or in defense of one's self or another.
2. Under the 4th Amendment, a police officer may use only such force as is "objectively reasonable" under the circumstances. The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene.
3. The authorized use of physical force ends when the resistance ceases and/or the officer has accomplished the purpose necessitating the use of force.
4. Whenever practical, an officer shall give warning to an individual on which force is about to be used that the officer intends to use such force.
5. Any member of the CPD using any level of physical force except restraining force, (whether on duty or off duty within the City of Canandaigua) shall report or cause to be reported all facts relative to the occurrence on an Incident Report form as provided by the CPD. In addition to the other reports required, a member using physical force shall report or cause to be reported all facts relative to the occurrence on the approved Subject Resistance Report (SRR). See GO # 415 for documenting the use of force.
6. Only that equipment which has been issued or approved may be carried by a member while on duty and only such equipment may be used in the necessary application of physical force, except that in an emergency situation and with justification, a member may use any resources at one's disposal. The equipment mentioned herein includes department issued firearm, the Monadnock expandable straight baton, chemical agents such as "OC spray", and the Electronic Control Device (aka Taser which is covered specifically under GO 430). All members authorized to use these implements must successfully complete an initial training course prior to issue, and periodic training thereafter.
7. The displaying, brandishing, deployment or otherwise use of a baton, chemical agent, electronic control device or any firearm or rifle is to be considered physical force and, as such, must be reported.
8. Members are required to use restraining devices on all prisoners unless in the member's judgment unusual circumstances exist which make the use of restraining devices impossible or unnecessary, e.g. an elderly or handicapped prisoner. The mere placing of handcuffs on a prisoner is not construed to be a use of physical force; however, when the handcuffs become an instrument to exert force used to further subdue a prisoner or when a subject physically resists the application of handcuffs, a use of physical force occurred and must be reported. The use of a hobble to restrain a subject's feet and legs is authorized when

required for the safety of the officer, the subject or another person. The practice of hogtyeing (connecting the hobble to any other form of restraint, especially handcuffs) is strictly prohibited.

9. Whenever a member of the CPD uses force or restraining force that results in injury, one must take the following actions:
 - a) Notify the Supervisor in charge.
 - b) Evaluate the need for medical or mental health attention or treatment for the subject and if necessary,
 - c) Arrange for such attention or timely treatment when:
 - i. The subject has visible or apparent injury.
 - ii. The subject complains of an injury, pain or requests medical attention.
 - iii. The subject displays signs of labored breathing, appears to be in physical distress or appears to be losing consciousness.
 - iv. When a subject displays an inability to think rationally, exercise adequate control over behavior or impulses (e.g. aggressive, suicidal, homicidal, sexual), and/or take reasonable care of his/her welfare with regard to basic provisions for clothing, food, shelter, or safety.
 - v. When a Taser or Conducted Energy Device was used.
 - vi. When a chemical agent was used, or
 - vii. Incidents where a firearm was discharged at a subject.

NOTE: In the event a subject who is considered to be in need of medical attention refuses it, the member shall note this fact on the report and shall include the name of another member, preferably a supervisor (shift or duty sergeant) who should witness such refusal. If the subject refuses medical attention after EMS has arrived, or at the hospital then a medical professional should sign as the witness.

- d) The member shall provide the on-duty supervisor with all the relevant information necessary to conduct a thorough investigation surrounding the use of force incident.
- e) As noted above, the member shall prepare and submit the reports required by the current directives. If more than one member is involved in a use of force situation, one member shall complete an initial SRR containing the details of one's own activity while the other member(s) shall each complete a Supplemental SRR and supplement reports to the original incident report containing the details of their respective activities. Upon completion, the SRR and Supplemental SRR if required shall be forwarded to the on-scene supervisor for initial review, then to the Lieutenant for review.

C. Deadly Physical Force

1. A member may use deadly physical force only if he or she reasonably believes the action to be in defense of their life or the life of another person or in the defense of any person in immediate danger of death or serious physical injury. The discharge of a firearm by an officer at another person shall be considered a use of deadly physical force. Additionally, any application of pressure to the throat, windpipe, neck, or blocking the mouth or nose of a person in a manner that may hinder breathing, reduce the intake of air or obstruct blood circulation, is prohibited unless deadly physical force is authorized.

2. The fact that a member of the CPD is justified in using deadly physical force under the circumstances above does not provide justification for reckless conduct, which would amount to an offense against an innocent person whom the member is not seeking to arrest or keep in custody.
3. The use of deadly physical force against a “fleeing felon” shall be in accordance with the laws, directives and training governing such use of force. The “fleeing felon” shall not be presumed to be an immediate danger to the member or a third person unless he poses a clear threat to the member or of a third person; and, that threat demonstrates a wanton disregard for human life. Absent these conditions, a member is not justified in using deadly physical force against a “fleeing felon” and, such use of force is prohibited.
4. A “fleeing felon” in a vehicle traveling away from a member does not constitute an immediate danger to that member; therefore, the use of deadly physical force is not justified. A member of the CPD is prohibited from discharging a firearm from or at a moving vehicle unless it is reasonably believed that the occupants of the vehicle being fired upon are using or are about to use deadly physical force against a member or another person. Absent the previous circumstance, shooting at a vehicle, which is going away from a member, is strictly prohibited.

V. SUPERVISOR RESPONSIBILITIES

- A. Upon first learning that a use of force incident has occurred, the supervisor of the shift shall take the following action:
 1. Proceed immediately to the scene of the incident. If their presence is needed, the Operations Commander and/or the Chief of Police shall be notified.
 2. Provide the necessary assistance to members involved, including arrangements for medical attention or treatment, bearing in mind that any injuries to members must be fully documented.
 3. Ensure that any injuries to subject(s) are evaluated and receive appropriate and timely medical attention.
 4. Determine if the services of an evidence technician are required and to what extent, e.g. photographs, measurements and diagrams.

NOTE: In all cases, regardless of the fact that injuries are not apparent, the on-duty supervisor shall cause photographs to be taken of the suspect or person that force was used upon and all officers involved in the use of force including their clothing.
5. The supervisor on scene shall ensure a thorough preliminary investigation takes place to include, but not be limited to:
 - a) Canvassing for witness
 - b) Canvassing of businesses or residences for video footage
 - c) Securing statements from witnesses, officers and/or suspects

- d) Photographs of scene
 - e) Photographs of the suspect(s) to document injuries or lack of injuries
 - f) Photograph of officer(s)
 - g) Collection of all relevant evidence
6. Ensure that Body Worn Cameras of all involved officers are handled as outlined in General Order 254 (Body Worn Cameras).
 7. Supervisors should make a request to the Lieutenant to review Body Worn Camera footage of all involved officers before signing any SRR or SRR supplemental report. Any issues or concerns with the nature of the force used or the amount of force used should be brought to the attention of the Chief of Police via the chain of command. Supervisors will ensure all reports are properly prepared and submitted in a timely fashion.

The complete file consisting of all reports and attachments shall be forwarded to the Operations Commander for review without delay.

8. **The Operations Commander will review BWC footage of all officers involved in a Use of Force incident before signing any SRR or SRR Supplemental Report.**
9. In the event that a member is unable to complete a report due to injuries, the sergeant shall act on the member's behalf, submitting the report along with the Sergeant's own report or comments through the chain of command.

VI. DUTY TO INTERVENE

- A. Any officer present and observing another officer using force that they reasonably believe to be clearly beyond that which is objectively reasonable under the circumstances shall intercede to prevent the use of unreasonable force, if and when the officer has a realistic opportunity to prevent harm.
- B. An officer who observes another officer use force that exceeds the degree of force as described in Subdivision A of this section should promptly report these observations to a supervisor.

VII. REVIEW OF FORCE

- A. Upon receipt of a report of the use of deadly physical force, or use of force resulting in physical injury, the Chief of Police shall review the incident and assign the necessary and appropriate personnel to review and investigate the incident, unless the incident is of such a nature that a detailed review and investigation is obviously unnecessary, e.g. the disposition of a deer after injury in a motor vehicle accident.
- B. Upon review and investigation of a use of force incident, which incident is not of an inconsequential nature, it is required that all reporting and reviewing personnel ensure that their actions will permit a report of the findings to be submitted to the Chief of Police as soon as practicable.
- C. In an effort to protect the community's interest when a member may have exceeded the scope

of authority in the use of force, and, conversely, to shield a member from possible confrontation with the community in the event that, acting within the scope of authority, a death or serious injury resulted, the member shall be removed from line-duty assignment pending an administrative review.

- D. Such review may include Grand Jury investigation, the use of any third-party law enforcement agency or any other process needed to ensure a full investigation of the facts and circumstances of the incident. If deemed necessary, other members who may have been involved, however indirectly, may also be removed from duty. Following such removal under this provision, the return to line-duty shall be only with the express permission of the Chief of Police.
- E. In the event a member is removed from duty under any of the above provisions, consideration shall be given to providing stress counseling in order to assist the member in coping with the critical or traumatic incident.
- F. Consistent with protocols as established in General Order 340 Discipline, this agency has established standards for addressing the failure to adhere to use of force guidelines.